IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINETEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 21151 of 2004

Between:

P. Saifulla, S/o Mahaboob Saheb,
R/o D.No. 2-7-16, RTC Nallagutta, Piler, Chittoor District.

..... PETITIONER

AND

1 The Collector and District Magistrate, Chittoor.
2 The Government of Andhra Pradesh, rep. by Chief Secretary,
Secretariat, Hyderabad.
3 The Superintendent, Central Prison, Cherlapalli.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Habeas Corpus under Art. 226 of the Constitution of India, directing the respondents to produce Sri Pathan Shafi S/o Mahaboob Saheb, now detained in Central Prison, Cherlapalli before this Hon'ble Court and may be released forthwith after declaring that his detention is illegal and void.

Counsel for the Petitioner : MR.C.PRAVEEN KUMAR

Counsel for the Respondents : THE ADVOCATE GENERAL

WRIT PETITION NO : 21158 of 2004

Between:

D.B. Jayachandra Reddy, s/o Venkat Reddy,
R/o Chintalavaripalli, H/oThatiguntapalli (v),
Sadum Mandal, Chittoor District.

..... PETITIONER

AND

1 The Collector and District Magistrate, Chittoor.
2 The Government of A.P. rep. by Chief Secretary,
Secretariat, Hyderabad.
3 The Superintendent, Central Prison, Cherlapalli.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Habeas Corpus under Art. 226 of the Constitution of India directing the respondents to produce Sri B. Rajesh Reddy @ Rajesh Reddy S/o Jayaram Reddy @ Jayachandra Reddy now detained in Central Prison, Cherlapalli before this Hon'ble Court and he may be released forthwith after declaring that his detention is illegal and void.

Counsel for the Petitioner : MR.C.PRAVEEN KUMAR

Counsel for the Respondents : THE ADVOCATE GENERAL

The Court made the following :

COMMON ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

Both the Writ Petitions are being disposed of by this common order. Facts are taken as in writ petition No.21151 of 2004.

In both the writ petitions, the detenus were detained under the provisions of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter referred to as 'the Act') by an order of the District Magistrate, Chittoor, dated 30th October 2004. Both of them were arrested on 6th November 2004.

It is stated that though the detenus were served with the grounds of detention, they were not served with the documents referred to in the grounds of detention. In fact on 12th November 2004, a friend of the writ petitioner Sri D.B.Venkataram Reddy went to the Jail along with an Advocate and requested the Superintendent of Jail to collect from the detenu all the documents, which were supplied to him. He was informed that no documents had been served on the detenu till date. Therefore it was urged in the petition that failure to supply the documents referred to in the grounds of detention, vitiated the detention and the detenu had been deprived of an opportunity to make an effective representation against his detention. It was also submitted that the offences as mentioned in the grounds of detention do not fall under Chapter 16 of the Indian Penal Code therefore, it was a case of non-application of mind.

In para 7 of the counter it was specifically mentioned that the material papers along with the grounds and order of detention, were served on the detenu and proof of acknowledgement of receipt of the material papers was available. Record was also produced. When the case came up after the counter was filed, the learned Counsel for petitioner sought time to file a rejoinder and he filed a rejoinder, which was sworn by one D.B.Venkataram Reddy, who claims to be a friend of the petitioner and uncle of Rajesh Reddy, who was detained in another case. In this affidavit, he stated that he went to the prison as per the instructions of the Advocate and interviewed both the detenus - Pattan Shafi and Rajesh Reddy. Both of them informed him that the Sub-Inspector of Pileru Police Station and some forest officers came to the prison and obtained his signatures on 3rd December 2004. The detention has been ordered on 30th October 2004 and notice was issued by this Court on 18th November 2004 and the counter affidavit had been filed on 6th December 2004. So, the allegation of the petitioners was that just before filing the counter, they had obtained the signatures of the detenus, without even giving them the copies. In this affidavit it is further submitted that the detenus were asked to put their signatures without even giving dates, but the signatures were obtained on 3rd December 2004. When this affidavit was filed, this Court directed the Superintendent of Jail to file an affidavit and he filed affidavits in both the cases and has made a curious statement. In para 3 it is stated,

"It is submitted that I have verified the records maintained by us and I submit that the S.I. of Police, Pileru Police Station, Chittoor District has not come to our prison on 3.12.2004. However one Mr.Srinivasa Rao of Forest Department has visited the jail on that day. It is submitted that one Sri C.V.Reddy visited our Prison on 11.11.2004 to meet the detenu. Similarly, Venkata Ramana Reddy visited our prison to meet the detenu on 24.11.2004 and 06.12.2004. I submit that whether the deponent Sri D.V.Venkata Ramana Reddy is the same person visited on the above said dates is not within our knowledge. It is further submitted that the contention that the said individual visited our prison on 17.11.2004 is incorrect as per the records maintained by us."

He also stated that he was producing the extract of the Interview Register pertaining to the detenu. He denied the contention raised by D.B.Venkata Ramana Reddy that papers were served on the detenu on 03.12.2004. Although the Superintendent denied that any signatures were obtained from the detenus on 03.12.2004, but he has not at all informed the purpose of the visit of Sri Srinivasa Rao of the forest Department to the Jail on that day. Since the detenus have denied having received any papers and have categorically stated that on 03.12.2004 their signatures were obtained and one Srinivasa Rao of forest Department visited the Jail on that day, it creates strong suspicion that the relevant papers were, as a matter of fact, not given to the detenus, but only signatures were obtained on 03.12.2004. We do not understand when the Jail Superintendent could file an affidavit stating therein that a forest officer visited the Jail on 03.12.2004, why did he fail to give the reason for his visit.

The learned Counsel for petitioner has also submitted that in both the cases the detenus had been bailed out in the cases, which were referred to in the grounds of detention, but the grounds of detention do not at all disclose that the detaining authority was aware that the detenu had been granted bail and as such it is a case of non-application of mind. He relied on a judgment of the Hon'ble Supreme Court reported in *Anant Sakharam Raut V. State of Maharashtra and another.* The relevant paras of this judgment are reproduced hereunder;

***"5**. We do not think it necessary to go into all the grounds urged before us by the petitioner's counsel in support of his prayer to quash the order of detention. The one contention strongly pressed*

before us by the petitioner's counsel is that the detaining authority was not made aware at the time the detention order was made that the detenu had moved applications for bail in the three pending cases and that he was enlarged on bail on 13-1-1986, 14-1-1986 and 15-1-1986. We have gone through the detention order carefully. There is absolutely no mention in the order about the fact that the petitioner was an under trial prisoner, that he was arrested in connection with the three cases, that applications for bail were pending and that he was released on three successive days in the three cases. This indicates a total absence of application of mind on the part of detaining authority while passing the order of detention.

***7**. We are not satisfied that this is a fit case to resort to preventive detention. We refrain from referring to the other grounds urged before us and from examining them. The petitioner is entitled to succeed on the first ground.*

***8**. We hold that there was clear non-application of mind on the part of the detaining authority about the fact that the petitioner was granted bail when the order of detention was passed. In the result we set aside the judgment of the Bombay High Court under appeal, quash the order of detention and direct that the petitioner be released forthwith. The appeal and the writ petition are allowed without any order as to costs."*

To the same effect, he also referred to another judgment of the Supreme Court reported in *Abdul Sathar Ibrahim Manik Vs. Union of India and others*.

Since there is nothing in the order of detention and grounds of detention that the District Magistrate was aware that the accused had been bailed out in some of the cases therefore, the detention cannot be sustained.

For the reasons given hereinabove, both the Writ Petitions are allowed and the orders of detention are quashed. The detenus shall be released forthwith, if not needed in any other cases. No order as to costs.

_____

BILAL NAZKI, J

19th January 2005.

_____

Dr. G. YETHIRAJULU, J

ajr

To

1 The Collector and District Magistrate, Chittoor.
2 The Chief Secretary, Government of Andhra Pradesh, Secretariat, Hyderabad.
3 The Superintendent, Central Prison, Cherlapalli (By Spl.Messenger).

4 Two C.Cs.to the Advocate General, High Court of AP, Hyderabad

(OUT)

5 Two C.D. copies.